

COMMITTEE STATEMENT

LB 223

HEARING DATE: 2/11/99

COMMITTEE ON: Judiciary

TITLE: (Suttle, Connealy, Crosby, Kiel, Dw. Pedersen, C. Peterson, Thompson) Adopt the Court Appointed Special Advocate Act

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

| | | |
|---|---------------------|---|
| 7 | Yes | Senators Baker, Bourne, Brashear, Connealy, Hilgert, Pedersen Robak |
| | No | |
| | Present, not voting | |
| 1 | Absent | Senator Chambers |

PROPOSERS

Senator Deb Suttle

Gerald Rouse

Jeff Golden

REPRESENTING

Introducer

National Council of Juvenile & Family Court Judges

Children and Family Coalition of Nebraska

OPPOSERS

REPRESENTING

NEUTRAL

REPRESENTING

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 223 creates the Court Appointed Special Advocate Act to authorize trained community volunteers to become advocates for children who enter the legal system primarily as a result of abuse or neglect. The volunteers would receive special training, would be officers of the court, could be a party of record and must be willing to commit to the court a minimum of one year of service to the child.

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Background checks on each volunteer would include criminal history, the abused or neglected children registry, the driving record and at least three references. Preservice training would focus on neglected and abused children, the court process and each would have to observe actual court proceedings. The volunteer would conduct an independent investigation to determine the best interest of the child and prepare recommendations.

No conflicts of interests can exist, all information will be kept confidential and the volunteers would not be civilly liable for acts or omissions, except in cases of willful misconduct, gross negligence, or bad faith. Sections are harmonized.

EXPLANATION OF AMENDMENTS, IF ANY:

The adopted Committee Amendment makes several changes to the bill, all of which further the intent of the bill. The Amendment alters some of the definitional portions of the bill and deletes the requirement that CASAs and CASA programs are to be certified by the Nebraska Court Appointed Special Advocate Association. The Amendment makes other substantive changes to the bill.

First, the Amendment allows the appointment of the Court Appointed Special Advocate (CASA) to be discretionary with the court. The bill in its original form required a CASA to be appointed in juvenile cases of abuse and neglect; the amendment allows the decision to appoint a CASA to be left to the judge hearing the case.

Second, the Amendment requires the court, when appointing a CASA, to specify in what capacity the CASA is to operate. Specifically the court is to designate whether the CASA is a co-guardian ad litem, if both a volunteer and an attorney are appointed to represent the child, or as a friend of the court acting under the authority of the court. Regardless of the designation of the appointed CASA, the Amendment requires the court to issue a memorandum of understanding setting forth the roles and responsibilities of the CASA.

Third, the Amendment makes it clear that any party may call the CASA as a witness in the juvenile proceeding.

Fourth, the Amendment provides for a process by which a CASA can be removed by a party or by the court.

Fifth, the Amendment specifies that nothing in this bill shall affect the attorney-client privilege.

Sixth, the Amendment provides for the possibility of a criminal penalty if the CASA violates the confidentiality provision of the statute.

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Finally, the Amendment changes the immunity provision of the bill. Specifically, the Amendment provides that CASAs, and CASA programs, are immune from civil liability for any damage or injury if acting in good faith and within the scope of this bill, so long as the damage or injury was not caused by willful or wanton misconduct. The Amendment gives an exception for this grant of immunity and allows a plaintiff to sue a CASA and/or a CASA program for any injury or damage of the negligent operation of a motor vehicle. The amount of recovery is capped at the limit of the culpable party's insurance coverage.

Senator